

701—115.5(421,441) Motions and settlements.

115.5(1) Authority of board to issue procedural orders. The board may issue preliminary orders regarding procedural matters.

115.5(2) Motions. No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the board and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than ten days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. Filing of motions. Motions pertaining to the hearing, except motions discussed in paragraph 115.5(2)“b,” must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board or presiding officer.

b. Motions for summary judgment and motions to dismiss for lack of jurisdiction.

(1) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this chapter or any other provision of law governing the procedure in contested cases.

(2) Motions for summary judgment and motions to dismiss for lack of jurisdiction must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. The board may request oral argument on the motion or may issue a ruling without argument. A summary judgment order rendered on all issues in a contested case or order on motion to dismiss for lack of jurisdiction is subject to reconsideration pursuant to subrule 115.9(2).

c. Motions to withdraw. An appellant may withdraw the appeal. Such a withdrawal of an appeal must be in writing and signed by the appellant or the appellant’s designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board’s granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

d. Motions for refund. If the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board’s final agency action of the appellant’s right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within ten days of the board’s final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

115.5(3) Settlements. Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. The board will not approve a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

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